depended on a treaty which was never ratified, and that, therefore, the courts may review the findings of the United States commissioners. *United States* v. *Loo Way* (D. C.), 68 Fed. 475. That the law on the question involved in the principal case is still unsettled is shown by the fact that *Ex parte Lee Kow,* 161 Fed. 592, was decided less than a week after the principal case and upon a very different theory.

MASTER AND SERVANT—DISOBEDIENCE OF RULES LAID DOWN BY MASTER—ACTS OF VICE PRINCIPAL.—Plaintiff was injured while engaged in work which he knew was being negligently carried on in violation of the defendant's rules, but the work at all times was under the direction of the defendant's foreman. *Held,* that the master was liable. *Wiley* v. *St. Joseph Gas Co.* (1908), — Mo. App. —, 111 S. W. 1185.

The weight of authority is doubtbless with this case. Where a servant is ordered to perform a particular act by one authorized to give orders for the master, he is not negligent in doing as directed, even though it is in violation of the rules of the master. *Pennsylvania Co.* v. *Roney, Admr.,* 89 Ind. 453; *Central Railroad* v. *DeBray,* 71 Ga. 406; *Kansas City, Fort Scott & Gulf Railroad* v. *Kier,* 41 Kan. 661; *Union Pacific Railroad Co.* v. *Springsteen,* 41 Kan. 724; *Hurlbut* v. *Wabash Railroad Co.,* 130 Mo. 657. In some of these cases it will be observed that there is the additional element of frequent violations of the rule in question. In cases where the master knows of the infraction, or where the violation is so habitual or customary that the master is charged with notice, it is usually held that the master has waived the rule. In the principal case the court says that a man can serve but one master, and if the company places its servants under a foreman, the orders of the foreman are the orders of the master, and if ordered to break the rules of the company it is not negligence to obey. All of the authorities, however, are not in accord with this doctrine. In *New York, Chi. & St. L. R. Co.* v. *Ropp,* 76 Ohio St. 449, 81 N. E. 748, the plaintiff, a car repairer, whose duty it was to be under cars, agreed in his contract of employment that he would see to it that the cars under which he should work were guarded with blue flags or lights. A foreman or boss asked him to assist in repairing an unguarded car; he obeyed, and was injured. Held that the master was not liable, that the regulation was reasonable, that the servant had disregarded the terms of his contract, that by so doing he was negligent, and could not recover. In *Keenan* v. *New York, Lake Erie & Western Railroad Co.,* 145 N. Y. 190, 45 Am. St. Rep. 604, where the rules of the company required all work upon cars to be done upon certain repair tracks, a gang boss of the master told the plaintiff that he had better do some work under a car which was not upon the repair track; held, that the master was not liable unless the boss had direct authority to change the rules of the company.

MASTER AND SERVANT—LIABILITY FOR INJURIES TO THIRD PARTIES—ACTS OF SERVANT—AUTOMOBILE ACCIDENT.—Plaintiff was knocked down and run over by the defendant's automobile driven by defendant's chauffeur, who had

secured his master's consent to use it for his own purposes. *Held* (HOUGHTON and MCLAUGHLIN, JJ., dissenting), that the defendant was not liable. *Cunningham* v. *Castle* (1908), 111 N. Y. Supp. 1057.

Where one person has sustained an injury from the negligence of another, he must in general proceed against him by whose negligence the injury was occasioned. If, however, the negligence which caused the injury was that of a servant while engaged in his master's business, the person injured may disregard the immediate author and hold the master liable in damages. This is the general proposition as to the responsibility in tort. *King* v. *N. Y. C. & H. R. R. R. Co.*, 66 N. Y. 181, 23 Am. Rep. 37. Further, however, the doctrine of *respondeat superior* applies only when the relation of master and servant actually exists. Beyond the scope of his employment the servant is just as much a stranger to his master as any third party. If the servant is engaged in any act not connected with such business for however short a time, the relation is suspended and an act of a servant during such an interval is not attributed to the master. *Higgins* v. *Western Union Tel. Co.*, 156 N. Y. 75, 50 N. E. 500, 66 Am. St. Rep. 537. See *Chicago Con. Bot. Co.* v. *McGinnis*, 51 Ill. App. 325; *Morier* v. *St. Paul, M. & M. R. R.*, 31 Minn. 351, 17 N. W. 952, 47 Am. St. Rep. 793; *Wylie* v. *Palmer*, 137 N. Y. 248, 33 N. E. 381. In applying these principles the court divided, the majority opinion holding that the servant here was acting at liberty and seeking his own ends exclusively, even though the injury complained of could not have been committed without the facilities afforded to the servant by his relation to the master. *Sheridan* v. *Chadick*, 4 Daly 338; *Fish* v. *Coolidge*, 47 App. Div. 159, 62 N. Y. Supp. 238; *Stewart* v. *Baruch*, 103 App. Div. 577, 93 N. Y. Supp. 161; 1 SHEARMAN & REDFIELD, NEGLIGENCE (5th Ed.), § 147. The dissenting opinion relies upon the element of consent to the use of the instrumentality as controlling in this case. To make the master liable it is not necessary to show that he expressly authorized the particular act. *Rounds* v. *D. L. & W. R. R.*, 44 N. Y. 129, 21 Am. Rep. 597; see *Quinn* v. *Powers*, 87 N. Y. 535, 41 Am. Rep. 392; *Williams* v. *Koehler & Co.*, 41 App. Div. 426, 58 N. Y. Supp. 863. As the law now stands the principal case does not seem to be a departure, for, as suggested by the majority opinion, "It may be wise and in the public interests that responsibility for an accident caused by an automobile should be affixed to the owner thereof, irrespective of the person driving it, but the law does not now so provide."

MASTER AND SERVANT—SAFETY APPLIANCE ACT—INTERSTATE COMMERCE.—Plaintiff, an employee of defendant, was injured and alleged that his injuries resulted from defendant's failure to use automatic couplers as required by act of Congress. Defendant's road was entirely within the state of Colorado, but evidence showed that at various times it received from and delivered to connecting lines passengers and freight which had come from or were destined to points without the state. *Held*, that to recover under the act of Congress, plaintiff must show that the cars he was attempting to couple were engaged in interstate commerce. *Rio Grande Southern R.* v. *Campbell* (1908), — Colo. —, 96 Pac. 986.